

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HENRY MERCEDES,

Plaintiff,

-v-

No. 12 Civ. 2293 (LTS)(DF)

NEW YORK D.O.C. et al.,

Defendants.

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MEMORANDUM ORDER

Pro se Plaintiff Henry Mercedes (“Plaintiff”) brings this action, pursuant to 42 U.S.C. § 1983, against the New York City Department of Correction (“D.O.C.”) and four D.O.C. Officers, alleging that his constitutional rights were violated during his imprisonment at Rikers Island. Before the Court is the Report and Recommendation (the “Report”) of Magistrate Judge Debra Freeman, recommending that Plaintiff’s action be dismissed sua sponte and without prejudice, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

When reviewing a magistrate judge’s report and recommendation, the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The district court “may adopt those portions of the report to which no ‘specific, written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” Adams v. New York State Dep’t of Educ., 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b)).

Having reviewed Magistrate Judge Freeman’s Report, to which no objection was

made, the Court finds no clear error. Accordingly, the Court adopts the Report in its entirety and Plaintiff's action is dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). The Clerk of Court is respectfully directed to close this case.

The Plaintiff's failure to file written objections precludes appellate review of this decision. See Caudor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008). The Court therefore certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith and in forma pauperis status is denied for the purpose of an appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York
November 20, 2013

/S
LAURA TAYLOR SWAIN
United States District Judge